No. _____

Supreme Court, U.S.
FILED
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In the

Supreme Court of the United States

Edward Joseph Cycenas,

Petitioner

v.

Keith E. Stoner, James Flanigan, David L. Grindell, Trudy Schmidt, James H. Taylor, Myron Schuster, and Helen Steffen

Respondent(s)

On Petition For Writ of Certiorari
To The United States Court of Appeals for the Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Edward Joseph Cycenas, *Sui Juris,*
In Propria Persona
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QUESTIONS PRESENTED FOR REVIEW

1. Whether the district courts of the United States have jurisdiction to enforce, through injunctive relief, federal land grant patent rights where a state court has denied hearing patent based counterclaims and made local ordinances applicable to deny the grantees assign use of his land.

2. Whether an infringement complaint seeking, *inter alia*, declaratory and injunctive relief against state court and local government officials' application of use regulations without due process may be brought under 28 U.S.C. 1338 (a) under the usual and customary definition of "patent" or whether 35 U.S.C. 100(a) and 35 U.S.C. 101 preclude "patent" from embracing a "Land Patent".

3. Whether this Court should grant certiorari to clarify land patent jurisdictional jurisprudence that, like constitutional rights as stated in Miranda v. Arizona, "where rights are secured (by land patents) no rule making can abrogate them" and the federal courts are there to decide and rule in cases to enforce those patent rights where abrogated without condemnation or just compensation or hearing of counterclaims to local ordinance enforcement.

LIST OF ALL PARTIES TO THE PROCEEDINGS BELOW

The following land patent assign appeared below as plaintiff-appellant: Edward Joseph Cycenas.

The following appeared as defendant(s)-Appellee(s) : Keith E. Stoner, BURNETT COUNTY zoning officer; James Flanigan, BURNETT COUNTY Zoning Administrator; David L. Grindell, BURNETT COUNTY Corporation Council; James H. Taylor, BURNETT COUNTY circuit court judge; Myron Schuster, BURNETT COUNTY Administrator; Helen Steffen, BURNETT COUNTY Clerck.

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Petition for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit.

Comes now Edward Joseph Cycenas, Petitioner, *in Propria Persona,* prays that a *writ of certiorari* will issue to review the judgment of the United States Court of Appeals, 7th Circuit, filed March 5th, 2004 and rehearing denied March 23rd, 2004, which affirmed the United States District Court's *sua sponte* jurisdictional dismissal of this petitioner's land patent infringement suit against local zoning and state court officials named as defendants herein.

Citations to opinions below

The 10-30-2001 verbal order of Judge James H. Taylor of the State of Wisconsin, Circuit Court of Burnett County to comply with the ordinance, followed by the immediate dismissal as to the ordinance enforcement forfeiture action once permits were issued (11-13-2001) left this petitioner's counterclaim for trespass and patent infringement unheard and un- appealable. A copy of the court's docket is included in the Appendix at Pg. 1-3.
Thereafter this Petitioner, as patent assign, filed a Verified Complaint of Patent Land Grant Infringement in the District Court of the United States of America for the Western District of Wisconsin, seeking declaratory and injunctive relief along with damages for the acts and omissions of the defendants against the federally patented rights of this Petitioner. The United States District Court for the Western District of Wisconsin in FACTS "defendants trespassed on plaintiff's property and regulated his use of the property by ordinance" then, without notice, ordered, *Sua Sponte,* a dismissal

of the complaint for "lack of subject matter jurisdiction" by confining 28 U.S.C. § 1338(a) and 35 U.S.C. § 271(b) to "invention patents" only, and by confining 28 U.S.C. 1331 to "the United States Constitution(sic)" thereby relegating a land patent to a non-law, non-treaty of the United States. Further inferring that the application of county land use ordinances against the right of a private owner to build and exclude government officials was not subject to due process considerations and no hearing need be provided to the petitioner's counterclaim against the land use ordinances application and trespass by enforcement officials. The decision in effect constituted the district court saying government invasion on posted lands and taking of the right to create shelter (build) on ones own land did not violate the Constitution or the intent of the act of congress under which the patent was issued. Appeal was taken to the United States Court of Appeals for the Federal Circuit pursuant to 28 U.S.C.§ 1295(a)(1) and its June 2nd, 2003, order of transference pursuant to 28 U.S.C. § 1631 to the 7th Circuit is attached (app. Pg. 7-9). Thereafter on June 10th, 2003, this petitioner submitted a petition for writ of error and mandamus from this Court to the federal circuit, which was rejected by the clerk because, *inter alia*, "the petition does not show....why adequate relief cannot be obtained ... from any other court". Thus this petitioner proceeded with an appeal in the 7th Circuit. On March 5th , 2004, United States Court of Appeals, Seventh Circuit affirmed the *sua sponte* jurisdictional dismissal of the district court . (app. ,) On March 23rd, 2004 the United States Court of Appeals, 7th Circuit denied rehearing and issued its mandate. [Copies of the opinions and the referenced order of mandate are included in the

appendix to this petition, infra., App. Pg. 10-13] The Patent is cited in the appendix Pg. 14-15

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JURISDICTION

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The jurisdiction of this Honorable Court is invoked under 28 U.S.C. § 1254(1).

Constitutional, law, statute and treaty provisions involved in this case

The Constitutional provisions involved in this petition are Constitution of the United States: Contracts Clause (Art. 1, 10), Ex Post Facto Clause (Art.1, 10)Patents Clause (Art. 5), Amendments IV, V, XIV, and the common law embodied therein.

Art I,10: No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Patents clause: Congress shall have the authority to issue patents.

Amendment VI; The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV, Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The law/treaty provisions involved in this case are that the United States of America granted, and, by the presentment of the patent, grants "all rights and appurtenances.. of whatsoever nature, thereunto belong" to Per Olson (the grantee) and to his heirs and assigns (Edward J. Cycenas as assign) forever. Such as the right of the Assign to bring suit for recourse and to bring federal suit to enforce the right to recourse secured by the patent.

28 U.S.C. § 1331: The district courts shall have original jurisdiction of all civil actions

arising under the Constitution, laws, or treaties of the United States

28 U.S.C. § 1338(a) The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.

35 U.S.C. 271(b): Whoever actively induces infringement of a patent shall be liable as an infringer.

35 U.S.C. 281: A patentee shall have remedy by civil action for infringement of his patent.

35 U.S.C. § 283: The several courts having jurisdiction of cases under this title may grant injunctions in accordance with the principles of equity to prevent the violation of any right secured by patent, on such terms as the court deems reasonable

Statement of the Case

(A) Statement of Facts

1. **Patent –** (See Appendix (app.) Pg. 14-15 for text of U.S. Homestead Patent) On April 5th, 1892 President Benjamin Harrison issued a Homestead Certificate to Per Olson For a certain tract of land. Plaintiff (Petitioner Edward Joseph Cycenas) has title to the land pursuant to this certificate. (See district court MEMORANDUM and ORDER – FACTS- app. Pg. 5) The Patent further grants not

only title but the right "TO HAVE AND TO HOLD the said tract of Land, with all appurtenances thereof"

2. **Government Agent Trespass –** Defendants Issued plaintiff (petitioner) a citation for building without a permit. Defendants trespassed on plaintiff's property and regulated his use of the property by ordinance. (FACTS- App. Pg. 5) Defendants are COUNTY and STATE government Officers/Officials (Pg. 4)

3. **State Court Forfeiture Action Hearing and Dismissal –** Your petitioner was served a "citation" and noticed the issuer, the court and officials in connection thereto, that the trespass occasioned and the forfeiture action both made in denial of this petitioner's patent right to exclude and right to use the land and appurtenances thereof where not subject to taking by mere "forfeiture action" that assumes rights vested in others where such vestiture is precluded by patent. Without due process - no right to build could be taken from this patent-assign so as to make the Ordinance effective on this patent land. Nor could this patent-assign be deprived the right to exclude by enforcement officials' warrantless invasion of posted land for search purposes . (See: BURNETT COUNTY COURT RECORD – 6-12-2001 Foreign Plea in Abatement / Counter-Forfeiture, 6-12-2001 Notice of Want of Jurisdiction and Demand for Due Process) On 10-29-2001, Petitioner motioned for default judgment of the Counter-Claim for trespass and taking. On 10-30-2001,

Judge demanded Petitioner "properly" fill out application. On 11-13-2001 Judge James H. Taylor dismissed the ordinance violation complaint, without ruling on the Counter-Claim, and closed the case.

4. **Counterclaim not heard** – to this date the counter-claim has not been heard and the judges in the United States Court of Appeals for the Seventh Circuit knew or should have known that this deprivation of due process made in denial of a patent right was being substantially enjoined by them in their decision. (See App. Pg. 11)

(B) Proceedings in District Court-

Petitioner commenced an action for patent infringement on February 4, 2003 and paid the filing fee in federal district court (District Court of the United States for the western District of Wisconsin) for patent infringement seeking declaratory and injunctive relief against the defendants ("officials" and "judge") as recourse from denial of remedy in state court. Further sought were damages for the trespass and infringement that was denied a hearing in state court. Asserting, *inter alia*, Defendants "were bound by Oath, Patent.... the Bill of Rights Fourth Amendment prohibition against private property taking." Essentially the complaint was that no condemnation of this petitioner's right to build, nor any just compensation, nor warrants to enter, had lawfully made valid any action taken by the defendants. Thus this petitioner sought declaratory and injunctive relief for deprivation of a patent right, and pendant damages in the posted and noticed amounts of daily use fees.

The Verified Complaint of Patent Infringement was forwarded "to the District Court of the United States of America for the Western District of Wisconsin"(sic) and Answered by the UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN, JOHN C. SHABAZ District Judge on February 5th, 2003 without issuance of summons or notice and opportunity to amend.

The UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WISCONSIN responded, noting "Defendants issued Plaintiff (petitioner) a citation for building without a permit. Defendants trespassed on Plaintiffs property and regulated his use by ordinance." Then the district court dismissed, *sua sponte,* the Bill of Complaint for lack of subject matter jurisdiction, stating 35 U.S.C. 271(b), and 28 U.S.C. 1338(a) prohibit infringement of patented inventions (Appendix pg. 5). Further 28 U.S.C. 1331 does not apply. Stating "these alleged actions do not violate the United States Constitution"

(C) The D.C. Circuit Opinion – This petitioner appealed the dismissal to the United States Court of Appeals for the Federal District pursuant to 28 U.S.C. 1295(a). The Federal District appeal was ORDERED transferred, on June 2, 2003, to the United States Court of Appeals for the 7th Circuit pursuant to 28 U.S.C.1631, finding that "the district court action did not arise in whole or in part under an act of Congress related to a patent, i.e., a patent regarding an invention".

The Opinion of the D.C. Circuit in short put forth without basis that both 28 U.S.C. § 1338 and 35 U.S.C. § 271 apply only to "a patent regarding an invention" and transferred the appeal to the United States Court of Appeals

for the Seventh Circuit pursuant to 28 U.S.C. § 1631. No citations for their holdings were included, nor was any reference made to 35 U.S.C. § 281 (281- A patentee shall have remedy by civil action for the infringement of his patent)

On June 10th, 2003, this Petitioner submitted Petition for Writ(s) of Error and Mandamus addressed to individual Justice, William H. Rehnquist as Circuit Justice for the Federal Circuit. The Petition was returned to this Petitioner along with a response. In response the Clerk of Courts returned the petition for, *inter alia*, failure to state "why adequate relief cannot be had in any other court and by any other means".

(D) The Seventh Circuit Opinion - This Petitioner, to exhaust the appeal of the dismissal, proceeded in United States Court of Appeals for the 7th Circuit. Therein that court March 5th, 2004, AFFIRMED the district court's *sua sponte* dismissal holding that: "a dispute involving rights in a piece of land does not present a federal question simply because ownership of that land is claimed under a grant from the United States government" *Oneida Indian Nation v. County of Oneida, 414 U.S. 661, 676-77* and 28 U.S.C. 1338(a) only applies to "invention Patents" and that 35 U.S.C. 271(b) does not apply to land patents.

This Petitioner then submitted a Request for Rehearing, stating, in part, that "where the use or enjoyment of the property by the grantee is denied, such an issue does in fact "Arise under" the patent." The Request for Rehearing was denied on March 23rd , 2004.

This petitioner now submits this petition for Writ of Certiorari to this court seeking relief

for infringement of his patent rights, namely the right-to-use and the right-to-remedy (payment of posted and noticed fees) for infringement, having been left deprived of remedy in both state and federal court venues. This is now truly the court of last resort

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Reasons for Granting the Writ

1. The Decision Grants State courts the power to overturn federal grants of land and make barren federal patent rights.

This Case and the Questions presented thereby are of unequivocal importance to all private land owners now suffering under ever intrusive land use regulations imposed by local government officials pursuing forfeiture actions upon the mere governmental assertion of land patent precluded equitable interests and under color of law. At some point, as has already happened on a small scale, a large scale revolt by land owners, the true sovereigns of the republics, is immanent as more and more people find themselves devoid of use and enjoyment of their land without: Due Process, condemnation, and just compensation, in state court and without protection of the federal courts to make effective the federal patent grants and guarantee the use and enjoyment of the properties of that land to the grantees.

This case affords this Court the opportunity to put forth and guide the district and appellate courts in upholding federal land patent rights where there has been infringement by local officials and state court actors deny or

disparage the grantee's use of his land in abrogation of the grant itself and the Fourth and Fifth Amendments.

Similarly, where state courts refuse land patent consideration and refuse to make local officials liable for trespasses and payment of posted and noticed fees/fines for trespass/infringement, the cause arises not under the tort of trespass, but under unlawful seizure and the right of the land patent grantee to restrict and regulate the use of his property, rights so basic and inherent that it cannot be deprived the patentee without destroying the very nature of property.

This Court now has the opportunity instruct the district courts to apply a wider view of *Oneida Indian Nation v County of Oneida* principles of "Arising under" jurisdiction, not just in Indian Treaty cases, but to cases where state court actors have made a cause un-hearable and un-appealable.

This court can do so by reading jurisdictional clause 28 U.S.C. 1338(a) in the exact terms under which it is written, by applying 28 U.S.C. 1331 or by applying *Ex Parte Young* injunctive relief to give teeth to federal adjudications where state and local actors disregard it.

This court clearly has the means to end the pervasive usurpation now threatening all private properties in land and surly has the duty to effectuate the intent of the land grant acts of Congress.

Likewise, this Court owes a duty to uphold the solemn grants of the United States

to the true title land owners throughout this nation against state and local officials pretending that they have authority to overturn or ignore, summarily, in state courts the effects of federal land patents. The federal judge-counterparts, acting in comidy with State court due process violators, who dismiss complaints seeking injunctive and declaratory relief in federal court and leave the patent assigns without recourse further deprive these patent-assigns of their private property without due process of law, hiding behind unpublished and unsubstantiated OPINIONS rewording statutes by pulling limitations from irrelevant subsections.

The case *sub judice* presents this Honorable Court with the opportunity to exemplify when the jurisdiction of the district courts does apply to enforce land patent rights granted by the United States and put the state courts on notice that when they enforce state created governmental equitable rights over private property land owner's patent rights, depriving patentees of the efficacy of these grants and the use and enjoyment of the land so granted, that the federal courts are there to hear complaints of denial of patent rights and enforce those land patent rights through declaratory and injunctive relief.

This Court's function to provide appellate jurisdiction over the district courts and courts of appeals of the United States affords it the power to finally provide the enforcement of the patent that state court and federal courts have refused to give.

2. The decision wrongly relieves local and state government officials of any obligation to abide by prior federal adjudications.

Although this Court has put forth many times that "a controversy in respect of lands has never been regarded as presenting a Federal question merely because one of the parties to it derived his title under an act of Congress" that is not to say that when joined with a substantial claim such as a Due Process violation the district courts should automatically assume a position that because a claim includes a controversy in respect to land patented by the United States the district courts should dismiss. This posture, however, is being assumed in this case and others to deny *Ex Parte Young* type declaratory and injunctive relief from land patent precluded equitable claims enforced in state courts against the efficacy of these land patent grants. (this instant case being an example, See Also 9th Circuit *Virgin v. San Luis Obispo* 98-55557)

This Court held in *Joy v. City of St. Louis* " in those cases where the dispute necessarily appears in the course of properly alleging and proving the plaintiff's cause of action, the situation is entirely different". In *Oneida Indian Nation v. County of Oneida,* 414 U.S. 661 and elsewhere, this Court has often held that the state courts are sufficient to decide what rights attach "subject to the condition that their rules do not impair the efficacy of the grant or the use or enjoyment of the property by the grantee".

But as in Cases such as these where state court rules squarely impair the use and enjoyment of the land by the grantee, if *Young* type injunctive relief is not available from federal courts against local, county and state officers then no private property will long survive to exist because very few people can endure

the tyrannical regulatory assaults, fees, fines, penalties and eventual equitable foreclosures and forcible entry by armed sheriff's deputies throwing true title holders off their land to sustain a claim through the state courts and through the "discretionary" review of this Court for vindication.

In this instant case the State court actors, by evasion, would give no efficacy to the grant in upholding the grantee's right to require payment of posted and noticed land use fees/fines for infringement; and, the State court actors by requiring grantee to get a permit to build, first took, then granted back the impaired use and enjoyment of the property by the grantee. These governmental actors enjoined deprivation of this petitioners patent right to the use of the land. Here the State court actors refused to hear the counterclaim and dismissed the claim of the local land use regulators after requiring this petitioner to acquire a permit, foreclosing any further consideration of the counter-claim in state court.

The United States Court of Appeals for the Federal and Seventh Circuits, and the district court, in construing statutory language need first look at the ordinary language of the Statute in question.

The ordinary language of 28 U.S.C. 1338(a) is: *The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. Such jurisdiction shall be exclusive of the courts of the states in patent, plant variety protection and copyright cases.*

The "homestead certificate" is an act of Congress (through agency) signed into law by the

President and makes the rights granted there-under Patent-Rights. Deprivation of the right to use and improve the land (such as the right to build) is a deprivation of a patent-right. The stated purposes of the Homestead acts where to induce the productive use of the lands by the grantees and society in general would likewise benefit from the fruits of individuals' labors on the land.

Absent expressed language to the contrary, the language of the statute "must ordinarily be regarded as conclusive," *Consumer Product Safety Comm'n v. GTE Sylvania, Inc., 447 U.S. 102.*

The Fourth Amendment authorizes a person in this Petitioner's position to bar governmental agents from his property , *Camara v Municipal Court of the City and County of San Francisco,* 387 US 523; *See v. City of Seattle* 387 US 541.

Where the state court refuses consideration of the land patent and proceeds to leave local government regulators indemnified for their acts of trespass of property rights the cause then arises under the Constitution and the patent as to whether summery dismissal without a hearing comports to Due Process in the protection of patent property rights.

It should, also, not be viewed as insignificant that common law and constitutional principles of governmental and sovereign immunity have never permitted government agents to commit trespasses in violation of property rights. *Little v. Barreme*, 2 Cranch (6 U.S.) 170; *Wise v. Withers*, 3 Cranch (7 US) 331; *Osborn v. Bank of the United States*, 9 Wheat (22 US);

The inferior courts then disregard the ordinary language to apply a term of limitation found in Title 35, namely 35 U.S.C. 100(a) Invention- even though the term by it's definition applies "where used in this (35) title". Further, these courts apply "invention" to limit 35 U.S.C. 271(b) where the term of limitation is not used. Then the court of appeals digs out 35 U.S.C. 101 passed long after the land patent issued (Inventions patentable) to say a land patent cannot be a patent, Even if this Court had not strictly disavowed the practice of legislating from the bench, the inferior courts' discretion is further abused in it's failure to recognize that "invention", by it's legislative definition includes, "Discoveries" and that land and the rights thereto, under our European title system, were always in first instances claimed under the principle of discovery.

Likewise the U.S. Homestead Patent - Homestead Certificate enacted by agents of Congress at the GENERAL LAND OFFICE and signed into law (made Patent) by President Harrison, recites "to secure Homesteads to the actual settlers on the public domain...." thereby recognizing the improvements of settlers to the land, Thus falling within 35 U.S.C. 101 also. The District and Appellate courts fail to base any of there Opinions on any authoritative basis to support the proposition that land patents are any different from invention patents in there force, effect or jurisdiction.

In *Joy v. City of St. Louis* this court announced that the case would be much different if the rights had arisen under the patent verses the land having appended by accretions to the land described in the patent.

"Under the plain terms of the Due Process Clause and the clear import of this Court's precedent, a State's infringement of a patent violates the Constitution. ...where the State provides no remedy, or only inadequate remedies, to injured patent owners for its infringement of their patent." *Florida Prepaid Educ. Ex. Bd. v. College Savings Bank*

Due process claims under 42 U.S.C. § 1983 are readily recognizable by the district courts as "civil rights", the deprivation of "patent rights" by due process violation then should be afforded at least equal dignity.

Thus the federal courts are permitted under 28 U.S.C. § 1331, even if this Court was to conclude they were able to limit 28 U.S.C. 1338(a) to invention patents, to grant injunctive relief and may choose afterwards retain such jurisdiction to determine pendant state law claims.

Private property cannot be taken without Due Process. To allow the Defendants to remain restricting the use of the property by land use ordinances, without payment or redress to the Patentee, would necessarily result in the district and both appeals courts having deprived this patentee of property without due process and without just compensation.

This Court has stated: "(a) patent for an invention is as much property as a patent for land, the rights rest on the same foundation and are surrounded by the same sanctions" *Consolidated Fruit-Jar Company v. Wright.* 94 U.S. 92

Then, in this case, the United States Court of Appeals for the Federal and Seventh Circuit says, in effect, the sanctions for infringement of an invention patent do not apply to land patents and the federal courts will not hear or decide cases of land patent rights infringements suborned through Due Process violations by state court actors.

This Petitioner's and every patentees "right to use" and "right to recourse/remedy from trespass and uncompensated taking" are rendered barren rights by both the state and federal courts' refusal to hear a complaint to enforce Patent-Assign's right to use/improve as a superior right to those equitable interests created by "ordinances", unless this Court acts.

The Opinions of both courts of appeals, in limiting jurisdiction, rewrite statues by the addition of limitations and evade applying the *Ex Parte Young* injunction relief and *Oneida* jurisdictional precedences of this Court by misapplication of settled principles of law. Likewise, the lower courts evade the gravamen of the complaint and announce effects contrary to the patent and Due Process decisions of this Court.

3. The Decision gives State courts the power to decide by constructive dismissal the absolute and inherent rights in land. This Court is not pressed with the question of what rights "attach" under state law, like those of accretions adding to a land mass or the rights of equitable title division.

This petitioner receives no benefit from the County or the STATE save the facade of protection of his property. Petitioner thus owes nothing to the STATE or County. Petitioner

seeks only enforcement of this Petitioner's right to exclude and to secure beneficial private use of this petitioner's land. By the time the State and County takers are done, grass must be cut or can't be cut, timber can be harvested only by permission, 1000 ft "wetland" setbacks and 300 ft stream setbacks make even growing food to feed yourself illegal without permission. Owners can't live in homes that have to be built, rebuilt or even repaired. Windmills, cattle, fencing, tillage, barns, garages, and all necessary means to utilize the land are first whisked away by "official" highwaymen pretending all private property is usable only as they say so and then they limitedly "grant" back, by permit, a token use if any.

Where is the remedy for infringement of land patent rights where State courts bury complaints and counter-claims so they never get heard or worse jail the non-compliant counter-claimant on contempt? Compensation under STATE law doesn't include lawyers fees that usually break the back of the patent-assign long before a portion might become returned for "just compensation". Then STATE and federal courts simply don't take a complaint by the Patent-Assign himself seriously, judges erect barriers to "teach these damn Pro Se litigants a lesson" by myopic and strained construction of the Complaint to avoid it's gravamen, claiming immunity for their deprivation. [Any wonder why more cases of landowner defense by firearms pop-up every day.] Unless this Court bedrocks the right to seek relief in federal court, for deprivation of land patent rights where State courts have failed, the coming hand of God will find the souls of many public "servants" sorely unprepared and unable to hide behind THEIR immunity or bar.

4. The Decision wrongly makes the deprivation of the Right and Means to Exclude and the Right and Means to Use unjusticiable though a strained construction of the Complaint.

If not in State court, and not in federal court, then where? The State court's denial by non-hearing is what forced this petitioner to bring the federal complaint seeking declaratory and injunctive relief in the first place, to give effect to the patent that the state court refused to hear.

The district court's role is to ensure that claims of pro se litigants are given "fair and meaningful consideration" *Matzker v. Herr*, 748 F. 2d 1142, 1146 (7th Cir. 1984); *Caruth v. Pinkney* 683 F.2d 1044, 1050(7th Cir. 1982) rigor in examination (for fault finding purposes) is unwarranted.

By saying "trespass does not violate the Constitution" the judges of the Seventh Circuit fail entirely to take into account the gravamen of the complaint and apply a strained and overly obtuse examination to force the complaint to appear "wholly", "plainly" or "obviously" without merit. Just as a breaking and entering of a police officer into a home to seize a man's safe without a warrant is not simply larceny, the acts of the defendant government officials are not simply trespass. For a reasonable man to assert such goes beyond the bounds of credibility and "good behavour". These Judges act to deny this petitioner patent property without due process.

The Seventh Circuit is the same Court that recognized no distinction between the land rights dispute (determining rights under a grant of land in question) in *Wisconsin v. Baker 698 F.2d 1323,1327* then if it would a suit in enforcement of an invention patent. The difference here is that STATE OF WISCONSIN Inc. didn't bring this suit, this Petitioner brought it without council.

The Federal Circuit in *Patlex v. Mossinghoff, 758 F.2d 594,599 (Fed Cir 1985)* began:

> "It is beyond reasonable debate that patents are property. In *Consolidated Fruit Jar v. Wright 94 U.S. 92 (1876)* the Supreme Court stated: a patent for an invention is as much property as a patent for land. The rights rest on the same foundation and are surrounded by the same sanctions"

Yet in this petitioners case the federal courts have all chosen to disregard or counter their own decisions and those of this Court to apply different rules, different foundations, and deny sanctions applicable in "invention patent" infringement cases to this patent case.

Conclusion

The private property deprivation of patent rights by local officials and State courts is to onerous and widespread to deny, it's as common knowledge as that the sun rises in the east. The patent was instituted first and foremost "to Secure" in the patentee, his heirs and assigns forever the use and enjoyment of the land so granted. Congress meant is as a means to effect the high duty to the public the Congress owed and owes, for Governments are instituted among men for the just preservation

of life, liberty and property. Without adherence to the intent of solemnity that Congress meant to impart these grants no government honors the duty to which it is installed and continues, the integrity of both the federal government and the States, that by state enabling clauses vowed never to interfere, are at stake now. Devoid of remedy private patent land owners, who constitute the real electorate of the republic, will and justly should shake off the yoke of oppression and tyranny of "do nothing but take" government institutions and install that which protects them in their God given rights. This Court should grant Certiorari if only to tell the last remaining idealists, still believing the words "made Patent", you got nothing but worthless paper if that is so.

Relief Requested

Make people believe justice actually exists for these Patent grants. Rebuild our faith that at least the home base for our families' shelter, security, and provisions in times of need has some stability from the whim and caprice of those that mean to deprive these patent lands of any value. Make a just and peaceable redress through the courts a possibility. Proclaim loud and clear that where rights of the land patent are infringed, the Patent-Assign shall have remedy though civil action.

BURNETT COUNTY-7 Traffic Court Record
CIRCUIT COURT 11-14-2001 02:10pm

Caption County of Burnett vs Edward J. Cycenas
Responsible C.O. James H. Taylor
Case Number 2001 F0000095

Name/Alias Edward **J.** Cycenas
Address 7507 Woodland Est.
City Siren **St** WI **ZIP** 54872
Sex m **Race** ___ **DOB** ___

Filing Date/C.O. 04-03-2001 James H. Taylor
Disposition Date/C.O. 11-13-2001 James H. Taylor
District Attorney David L Grindell
Defense Attorney
Next Action 02-03-2003 08:00 am Review to Destroy Exhibits

Description No. 1 9.2(1) Construct Bldg w/o permit Citation No. BC 1219
Severity Forf. U **Plea** Not Guilty
Date(s)Committed 04-02-2001
Amended From
Disposition Dismissed /Pr Motion **Sent**

Date	Court Record Entries	Amount / Court Reporter / Tape / Counter Location	C.O.
04-03-2001	Complaint Filed		James H. Taylor
04-11-2001	Appearance		George Benson
04-11-2001	Not guilty plea		James H. Taylor

06-12-2001 Other Papers
Foreign Plea in Abatement/
Counter-Forfeiture

06-12-2001 Notice of Want of Jurisdiction and
Demand for Due Process
06-12-2001 Affidavit of Intent

06-12-2001 Affidavit of Truth

06-25-2001 Other papers
Actual and Constructive Notice of
Fault/Default on Affidavit not a Motion

06-28-2001 Other papers
Packet of documents provided to
Court by Mr. Cycenas during hearing

06-28-2001 Hearing James H. Taylor
Case continued to 9/27/01

08-03-2001 Transcript Judy Covey

10-29-2001 Notice Judy Covey
Notice Of Motion/Motion For Default
Judgment On Counter-Claim

10-29-2001 Affidavit Judy Covey
Affidavit Of Truth In Support of
Motion.

10-30-2001 Court trial James H. Taylor
Roberta Bitler

10-30-2001 Exhibit Judy Covey
Exhibit I - Blue Print Of Plan

10-30-2001 Exhibit Judy Covey
Exhibit 2 - Copy Of Letter To Defendant From James Flanigan, Zoning Administrator

10-30-2001 Exhibit Judy Covey
Exhibit 3 - Application For Land **Use** Permits

11-13-2001 Hearing James H. Taylor
Roberta Bitler
Permits Have Been Issued - Case Is Therefore Dismissed.

11-13-2001 Dispositional order/judgment
James H. Taylor

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

EDWARD JOSEPH CYCENAS,
Plaintiff,

v.

KEITH E. STONER, JAMES FLANIGAN, DAVID L. GRINDELL, TRUDY SCHMIDT, JAMES H. TALOR, MYRON SCHUSTER and HELEN STEFFEN,
Defendants.

MEMORANDUM and ORDER

03-C-063-S

Plaintiff Edward Joseph Cycenas commenced the above entitled action on February 4, 2003 and paid the filing fee. Pursuant to Rule 12(h)(3), Federal Rules of Civil Procedure, the Court reviews plaintiff's complaint to determine whether it has subject matter jurisdiction.

FACTS

The following allegations in the plaintiff's complaint are accepted as true.

Plaintiff resides at 7507 Woodland Estates Road, Siren, Wisconsin. Defendant Keith E. Stoner is a Zoning Administrator in Siren. Defendant David Grindell is Corporate Counsel in Siren. Defendant Trudy Schmidt is the Clerk of Court and Defendant James H. Taylor is a Judge. Defendant Myron Schuster is a County

Administrator and Helen Steffen is the County Clerk.

On April 5, 1892 President Benjamin Harrison issued a Homestead Certificate to Per Olson for a certain parcel of land. Plaintiff has title to the land pursuant to this certificate.

Defendants issued plaintiff a citation for building without a permit. Defendants trespassed on plaintiff's property and regulated his use of the property by ordinance.

MEMORANDUM

Plaintiff claims that this Court has subject matter jurisdiction under 28 U.S.C. § 1338(a) because this action arises under statutes relating to patents. The statute relating to patent infringement, 35 U.S.C. § 271 (b), prohibits infringement of patented inventions. Plaintiff is not alleging he has such a patent. He has identified no conceivable patent infringement for which this Court has subject matter jurisdiction.

Plaintiff also claims that this Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 because the action arises under the Constitution, laws or treaties of the United States. Plaintiff alleges that defendants issued him a citation for building without a permit, trespassed on his property and regulated his use under color of state law. These alleged actions do not violate the United States Constitution.

Any alleged trespass or interference with plaintiff's legal title in land cited by the plaintiff does not arise under any federal law. Accordingly, this Court has no jurisdiction of the subject matter of the plaintiff's complaint and dismisses the action for lack of subject matter jurisdiction.

ORDER

IT IS ORDERED that the above entitled matter is DISMISSED for lack of subject matter jurisdiction.

Entered this 5th day of February, 2003.

BY THE COURT:
/s/
JOHN C. SHABAZ
District Judge

NOTE: Pursuant to Fed. Cir. R. 47.6, this order is not citable as precedent. It is a public order.

United States Court of Appeals for the Federal Circuit

03-1274

EDWARD JOSEPH CYCENAS,
Plaintiff-Appellant,

V.

KEITH E. STONER,
and
JAMES FLANIGAN,
and
DAVID L. GRINDELL,
and
TRUDY SCHMIDT,
and
JAMES H. TAYLOR,
and
MYRON SCHUSTER,
and
HELEN STEFFEN,
Defendants-Appellees.

ON MOTION

Before RADER, SCHALL, and PROST, Circuit Judges. SCHALL, Circuit Judge.

ORDER

Edward Joseph Cycenas moves "to comply with 28 U.S.C. 2403" and to "correct the record." We consider whether this appeal should be transferred to the United States Court of Appeals for the Seventh Circuit.

Cycenas sued various persons in the United States District Court for the Western District of Wisconsin, alleging that they were infringing his asserted patent for land. The district court dismissed the action for lack of jurisdiction, noting that an action for patent infringement under 35 U.S.C. § 271 relates to infringement of patented inventions. Cycenas appealed to this circuit alleging that this court had jurisdiction pursuant to 28 U.S.C. § 1295(a).

We have jurisdiction to review, inter alia, appeals from district courts if the district court's jurisdiction was based, in whole or in part, on 28 U.S.C. § 1338. Section 1338 provides district courts with jurisdiction over an action arising under an act of Congress related to, inter alia, patents. It is clear from our review of the papers submitted that the district court action did not arise in whole or in part under an act of Congress related to a patent, i.e., a patent regarding an invention. Thus, we have no jurisdiction over this appeal. We transfer this appeal to the regional circuit court of appeals, here the United States Court of Appeals for the Seventh Circuit, pursuant to 28 U.S.C. § 1631.

Accordingly,

IT IS ORDERED THAT:

(1) Cycenas' motions are denied.

(2) This appeal is transferred to the United States Court of Appeals for the Seventh Circuit pursuant to 28 U.S.C. 1631.

FOR THE COURT

JUN-2 2003
Date

/S/
Alvin A. Schall
Circuit Judge

cc: Edward Joseph Cycenas
Keith E. Stoner
James Flanigan
David L. Grindell
Trudy Schmidt
James Taylor
Myron Schuster
Helen Steffen

FILED
U.S. COURT OF APPEALS FOR
THE FEDERAL CIRCUIT

JUN 2 2003

JAN HORBALY
CLERK

UNPUBLISHED ORDER
Not to be cited per Circuit Rule 53

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 4, 2004*
Decided March 5, 2004

Before

Hon. FRANK A. EASTERBROOK, Circuit Judge
Hon. DANIEL A. MANION, Circuit Judge
Hon. TERENCE T. EVANS, Circuit Judge

No. 03-2741

EDWARD JOSEPH CYCENAS,
Plaintiff-Appellant

v.

KEITH E. STONER, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Western District of Wisconsin

No. 03-C-063-S

John C. Shabaz, Judge

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*After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on

the briefs and the record. *See* Fed. R. App. P. 34(a)(2).

ORDER

Officials in Siren, Wisconsin issued Edward Cycenas a citation for making improvements to his land without obtaining a building permit as required by a local ordinance. Cycenas claims that he is the assignee of a "land patent" by virtue of a homestead certificate issued by the federal government in 1892, and that he is therefore immune from any regulatory restrictions on the use of his land. Cycenas first tried to levy fines of nearly $4 million on various local and county officials who attempted to enforce the ordinance; after failing in that effort he filed this lawsuit seeking damages and an injunction against enforcement of the ordinance. The district court promptly dismissed the case for want of subject matter jurisdiction.

See Fed. R. Civ. P. 12(h)(3). Cycenas then appealed to the Federal Circuit arguing that the defendants had infringed his "patent" rights. The Federal Circuit. stated that it had no jurisdiction to review the appeal because Cycenas had failed to allege in the district court that the defendants had infringed a patented *invention, see 28 U.S.C.* § 271; 35 *U.S.C.* § 1338(a), and transferred the case to us, *see* 28 *U.S.C.* § 1631.

Cycenas argues that the district court erred by dismissing his case for lack of jurisdiction because his case either presents a federal question, *see* 28 *U.S.C.* § 1331, or arises under the patent laws, *see* 28 *U.S.C.* § 1338(a). He is mistaken. Cycenas's first asserted basis for

jurisdiction fails because a dispute involving rights in a piece of land does not present a federal question simply because ownership of that land is claimed under a grant from the United States government. *See Oneida Indian Nation v. County of Oneida*, 414 *U.S.* 661, 676-77 (1974); *Wisconsin v. Baker*, 698 F.2d 1323, 1327 (7th Cir. 1983). His second asserted basis-that the defendants have infringed a patent, *see* 35 *U.S.C.* § 271-confuses a "land patent" with a "patent" right. A patent must concern a "new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." 35 *U.S.C.* § 101. Cycenas has not alleged that he has any such patented invention, and his purported land patent plainly does not qualify. The district court correctly dismissed this case for lack of subject matter jurisdiction.

AFFIRMED

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

March 23, 2004

Before

Hon. Frank H. Easterbrook, *Circuit Judge*
Hon. Daniel A. Manion, *Circuit Judge*
Hon. Terence T. Evens, *Circuit Judge*

No. 03-2741

Edward Joseph Cycenas,
Plaintiff-Appellant,

v.

Keith E. Stoner, et al.,
Defendants-Appellees.

Appeal form the United States District Court for the Western District of Wisconsin

No. 03 C 063

John C. Shabaz, *Judge*

ORDER

On consideration of the petition for rehearing filed by plaintiff-appellant, all of the judges on the original panel voted to deny the petition. The petition is therefore DENIED.

The United States of America

TO ALL WHOM THESE PRESENTS COME, GREETING:

Homestead Certificate No. *46-6-0** }
Application *6-284** }

Whereas there has been deposited in the GENERAL LAND OFFICE of the United States a CERTIFICATE of Register of the Land Office at **Eau Claire, Wisconsin*, whereby it appears that, pursuant to the Act of Congress approved 20th May, 1862, "To secure Homesteads to actual settlers on the public domain," and the acts supplemental thereto, the claim of **Per Olson* has been established and duly consummated in conformity to law for the

**North half of the South East quarter, and the lots numbered Sixteen and Seventeen of section five and the lot numbered one of section eight in Township thirty eight North of Range sixteen West of the Forth Principle Meridian in Wisconsin containing one hundred and sixty acres*

according to the Official Plat of the Survey of the said Land returned to the GENERAL LAND OFFICE by the SURVEYOR GENERAL.

Now Know Ye, that there is therefore granted by the UNITED STATES unto said **Per Olson* the Land above described: TO HAVE AND HOLD the said tract of Land, with the appurtenances thereof, unto said **Per Olson* and to **his* heirs and assigns forever.

In testimony whereof I, **Benjamin Harrison*, President of the United States of America, have caused these letters to be made Patent, and the Seal of the General Land Office to be hereto affixed.

Given under my hand, at the City of Washington, the **Fourth* day of **May*, in the year of Our Lord one thousand eight hundred and **ninety-two*, and of the Independence of the United States the one hundred and **sixteenth*.

By the President: /s/ **Benjamin Harrison*
By /s/* *M McKean* sec'y.
/s/**LR Conwell*, Recorder of the General Land Office **ad interim*

* *Denotes* handwritten on original, some inferences were made as to spellings, number-letter cursive and capitalization.